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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re S.S., JR., et al., Persons Coming
Under the Juvenile Court Law.

B291185

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. 18LJJP00050)

Plaintiff and Appellant,

v.

S.S., SR.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Natalie P. Stone, Judge. Affirmed as modified.

Karen Stalter, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Appellant.

S.S., Sr. (Father) appeals from the dependency court's dispositional findings and orders concerning his three minor children. In his briefs, Father contends that the court erred in applying Welfare and Institutions Code section 361.2¹ at the dispositional hearing because he was not seeking *custody* or placement of the minors and that substantial evidence did not support the juvenile court's finding of detriment or the order that his visits with the children be monitored. As we explain, the court did not apply section 361.2. Because, however, the court did not identify the legal grounds for the dispositional order or the factual basis for the detriment finding, and because that finding is prejudicial and unnecessary for the disposition, we strike it. The order is affirmed as modified.

BACKGROUND

A. *Family Background and Prior Dependency Proceedings*

The family consists of Father, his three minor children: S.S., Jr. (born 2003), Sa.S. (born 2005), Y.S. (born 2008); and their mother, S.R. (the mother).² Father lives in Mexico and is a noncustodial parent. Before the current proceedings, the children resided with the mother and their stepfather, A.R.

Between 2014 and mid-2017, the mother, A.R., and the children lived in San Diego County and were the subject of five child welfare referrals involving allegations of general neglect by the mother and physical abuse by A.R. The San Diego County

¹ All statutory references are to Welfare and Institutions Code.

² Neither the children nor their mother are parties to this appeal.

social services investigators found four of the referrals inconclusive or unfounded. In 2015, however, social workers substantiated an allegation that A.R. had physically abused S.S., Jr., and that the mother had failed to protect him. S.S., Jr., subsequently moved to Mexico to live with Father, and in 2017, he returned to the United States to live with Father's sister (the paternal aunt).

B. Current Proceedings

In December 2017, the Department of Children and Family Services (DCFS)³ received a referral alleging that A.R. had sexually abused his biological daughters from another relationship. The mother and A.R. denied the allegation and the mother stated that she never left her children alone with A.R. Sa.S. and Y.S. were removed from the home and placed with S.S., Jr., in the paternal aunt's home.

In January 2018, DCFS filed a petition pursuant to section 300, subdivisions (b)(1) and (d) on behalf of the children, alleging that the mother had created a detrimental home environment by permitting A.R. to reside in the home when she knew that he had sexually abused his two biological daughters.

At the detention hearing, the juvenile court ordered the children detained from the mother, and they remained placed with the paternal aunt. The court ordered DCFS to obtain contact information for Father and gave DCFS discretion to permit the children to visit Father. The court subsequently appointed Father counsel.

³ In 2016, the mother, A.R. and the children moved to Palmdale.

The jurisdictional/dispositional report revealed that the mother met Father in 2000, and two years later, they migrated to the United States. She claimed that Father abused alcohol, was unfaithful, and verbally abusive. Father informed DCFS that in 2011 he was deported to Mexico for “drinking and driving”; his criminal record showed several⁴ convictions for driving under the influence (DUI) of alcohol including the most recent in 2015. Father stated that he had a job and was working. Father also reported to DCFS that he had not spoken to his daughters, Sa.S. and Y.S., in more than a year.⁵ He indicated that he was comfortable with his children remaining with the paternal aunt, but if necessary, he was willing to have the children reside with him in Mexico.

DCFS recommended that the court sustain the allegations, declare the children dependents of the court, remove them from parental custody, and order reunification services. The court sustained the section 300 petition against the mother. The juvenile court proceeded with the dispositional hearing as to the mother and declared the children dependents of the juvenile court. The court ordered the children removed from the mother’s custody and ordered them to remain in the placement with the paternal aunt. The court also ordered DCFS to provide the mother with reunification services.

⁴ The record is not clear as to the exact number of DUI arrests and convictions Father has suffered; it does appear, however, that Father has at least two DUI prior convictions and that an alcohol related conviction or arrest resulted in his deportation to Mexico.

⁵ Counsel for minors subsequently told the court that the children claimed that they had telephone contact with Father after they were detained and placed with the paternal aunt.

Father's counsel requested the court continue the dispositional hearing as to Father to which the court agreed. On May 22, 2018, at Father's dispositional hearing, his trial counsel reiterated that Father was not requesting placement and that the children should remain placed with their paternal aunt. Counsel also represented to the court that Father was employed and had no further arrests after 2015. Counsel also shared that the minors had expressed the view that Father had dealt with his alcohol problems.⁶

The court stated: "I will note the father's not seeking placement. He's the noncustodial parent and not requesting placement. So I don't need to make removal findings for him, but I just find by clear and convincing evidence that it would be detrimental to place the children with him at this time." The juvenile court directed DCFS to assess whether unmonitored visitation for Father was appropriate, and in the meantime, the court ordered monitored visitation with discretion for DCFS to liberalize it. The court did not order Father to participate in any reunification services except monitored visitation. When Father's counsel objected to the monitored visitation order, the court responded that it wanted DCFS to conduct a further investigation of Father because of DCFS's lack of regular contact with him and his history of alcohol abuse.

Father filed a timely notice of appeal.

⁶ Statements of counsel are not evidence and counsel did not offer any evidence in support of the statements regarding Father's employment status, current criminal record or the children's belief regarding Father's purported recent sobriety.

DISCUSSION

On appeal, Father argues that the juvenile court erred when it applied section 361.2 at the dispositional hearing because he was not seeking physical custody or placement of the minors, and in any event, the finding of detriment against him was not supported by substantial evidence. He also complains that the juvenile court's order for monitored visitation was unwarranted.

Preliminarily, we observe that Father objected to the visitation order, but he did not otherwise object to the court's dispositional order or the court's finding that it would be detrimental to place the children with Father. Although the forfeiture doctrine applies in dependency cases, and the failure to object to a dispositional order on a specific ground generally forfeits a parent's right to pursue that issue on appeal (*In re T.G.* (2015) 242 Cal.App.4th 976, 984; see *In re S.B.* (2004) 32 Cal.4th 1287, 1293), an appellate court can exercise its discretion to reach the merits of a challenge to a dependency court order and finding when the finding could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763 [refusing to apply the forfeiture doctrine in the context of jurisdiction findings because the outcome had far-reaching implications concerning future dependency proceedings in the case].) Here, the court's finding of detriment could serve as a basis to terminate Father's parental rights to his children in the future. (See, e.g., *In re Gladys L.* (2006) 141 Cal.App.4th 845, 848 [before “sever[ing] completely and irrevocably” the rights of parents to their children, the court must have made a prior finding by clear and convincing evidence that the parent is unfit].) Consequently, we exercise our discretion to address the merits.

After a juvenile court asserts dependency jurisdiction over a child under section 300, it then considers the disposition, including a child's placement. (§ 358, subd. (a)(1); Cal. Rules of Court, rules 5.684(g) & 5.690.) Section 361, subdivision (a) permits the court to "limit the control to be exercised over the dependent child by any parent." (§ 361, subd. (a)(1).) Under section 361.2, where a court orders removal of a child from a custodial parent under section 361, the court shall determine whether there is a parent of the child, with whom the child was not residing at the time who wants to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child. (See § 361.2.)

At the dispositional hearing, the court recognized that Father was a noncustodial, nonoffending parent. It further observed that Father was not requesting custody or placement of the children in his home at that time, and was content to have the children remain with his sister.

Given these circumstances, Father argues that the juvenile court erred in applying section 361.2, and in finding that based on clear and convincing evidence, it would be detrimental to place the minors with Father. Although he asserts that the dependency court relied upon section 361.2 as the legal basis for the dispositional order, the record does not support that assertion. The court did not state that it was applying section 361.2 at the dispositional hearing. The record is ambiguous; in fact, the juvenile court did not identify any legal basis for the order or cite the evidence it was relying upon to support the detriment finding. Nor can this court infer these matters based on the record. Also, given the court's authority

under section 361, subdivision (a) to limit a parent's control over the dependent child, the court was not required to make a finding of detriment as to Father in this case. Because the court failed to articulate a basis for the detriment finding, and because it appears the finding was unnecessary for the disposition as to Father, it cannot stand, and we strike it.

We next consider Father's contention that the court erred in ordering that his visits with the children be monitored. Under section 362, the court has the discretion to make any reasonable orders for the care, supervision, custody, conduct, maintenance, and support of a child, including orders placing conditions on parental visitation. (See § 362.) In addition, when making dispositional orders, the juvenile court is not limited to the allegations of the sustained petition; rather, the court may consider all evidence on the question of the proper disposition. (§ 358, subds. (a) & (b); *In re Rodger H.* (1991) 228 Cal.App.3d 1174, 1183.) The dependency court has the discretion to determine what would best serve and protect the child's interests and to fashion a dispositional order accordingly; on appeal, we will not reverse that determination “ ‘absent a clear abuse of discretion.” ’ ” (*In re Daniel B.* (2014) 231 Cal.App.4th 663, 673.)

The court did not err when it ordered monitored visits for Father. Substantial, uncontroverted evidence in the record showed that Father had abused alcohol in the recent past, resulting in arrests and DUI convictions, including one that led to his deportation. And even though counsel claimed that Father had resolved his alcohol problems and had recent contact with the children, no evidence supported those claims.

Father has a history of alcohol abuse, and even assuming he had recent telephone contact with his children, initially Father reported to DCFS that he had not even spoken to his

daughters in more than a year. Given the circumstances, the order that Father's visits be monitored did not constitute an abuse of discretion.

DISPOSITION

The court's finding in the May 22, 2018 dispositional order that it would be detrimental to place the children with Father is hereby stricken. As modified, the order is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

BENDIX, J.